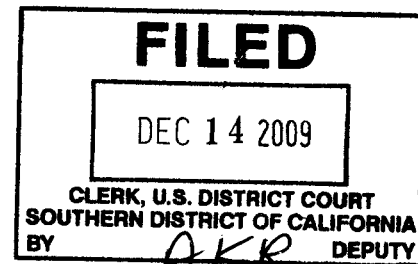


## NAME AND ADDRESS OF ATTORNEY

Harold M. Hewell (Cal. SBN: 171210)  
Hewell Law Firm  
105 West F Street, Suite 213  
San Diego, California 92101

PHONE: (619) 235-6854



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TRIAL JUDGE The Hon. Janis L. Sammartino

COURT REPORTER N/A

RABBI S. BINYOMIN GINSBERG, as an  
individual consumer, and on behalf of all others  
similarly situated,

CIVIL NO. 3:09-cv-00028 JLS (NLS)

(Appellant/Appellee) Plaintiff

vs

NORTHWEST, INC., a Minnesota corporation,  
and DELTA AIR LINES, INC., a Delaware  
Corporation,

NOTICE OF APPEAL (Civil)

(Appellant/Appellee) Defendant

Notice if hereby given that RABBI S. BINYOMIN GINSBERG

☒ Plaintiff ☐ Defendant above named, hereby appeals to the United States Court

of Appeals for the: (check appropriate box)

☒ Ninth Circuit

Federal Circuit

from the: (check appropriate box)

☒ Final Judgment

Order (describe)

entered in this proceeding on the 13 day of

November, 20 09

Transcripts required Yes ☒ No.

Date civil complaint filed: 1/8/09

Date: 12/14/09

Signature

VIA FAX

CERTIFICATE OF SERVICE

*Rabbi S. Binyomin Ginsberg vs. Northwest, Inc. and Delta Air Lines, Inc.*  
U.S. District Court, Southern Dist. of California, 3:09-cv-00028 JLS (NLS)

I, Harold Hewell, declare: that I am and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed in the County of San Diego, California, in which County the within-mentioned mailing/service occurred. My business mailing address is 105 West F Street, Suite 213, San Diego, California 92101. I served the following document(s):

NOTICE OF APPEAL (Civil)

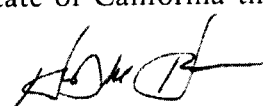
☒ by e-mail transmission of copies of the above documents in .pdf format to the e-mail address of the parties below on December 14, 2009. No delivery errors were reported.

☐ by CM/ECF notification at the time of filing.

☒ by placing the envelope for collection and mailing following our ordinary business practices on December 14, 2009. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 14, 2009, at San Diego, California.

  
/s/ Harold Hewell

Mailing List

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ATTORNEYS FOR DEFENDANTS

Christopher G. Kelly  
Judith R. Nemsick  
Holland & Knight LLP  
195 Broadway  
New York, NY 10007  
(212) 513-3264  
ATTORNEYS FOR DEFENDANTS

1  
2  
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4  
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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 S BINYOMIN GINSBERG,

12 Plaintiff,

13 vs.

14 NORTHWEST, INC.; DELTA AIR LINES,  
15 INC.,

16 Defendants.

CASE NO. 09-CV-28 JLS (NLS)

**ORDER: (1) DENYING  
DEFENDANTS' MOTION TO  
DISMISS WITH PREJUDICE, AND  
(2) ENTERING FINAL  
JUDGMENT IN FAVOR OF  
DEFENDANTS**

(Doc. Nos. 27, 28, 30, 31)

17  
18 Presently before the Court is Defendants' request for dismissal with prejudice of Plaintiff's  
19 breach of contract cause of action. (Doc. No. 28.) Also before the Court are Plaintiff's notices of  
20 intent to stand on his initial pleading.<sup>1</sup> (Doc. Nos. 27, 30, and 31.) Having considered all of these  
21 requests, the Court **DENIES** Defendants' request for dismissal with prejudice and enters final  
22 judgment in favor of Defendants.

23 The Court finds dismissal with prejudice of Plaintiff's contract claim inappropriate under the  
24 current circumstances. Although he failed to file his amended complaint within the time specified,  
25 Plaintiff has not engaged in the sort of inaction or disobedience of a court order that would merit the  
26 sanction of a Rule 41(b) dismissal. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir.


27  
28 <sup>1</sup> Although these documents were actually a motion for interlocutory appeal, a request for  
voluntary dismissal, and a request for entry of final judgment, the Court construes them as a notice  
of intent to stand on his initial pleading.

1 2004). Instead, having failed to comply with the Court's order, the proper result in this case is that  
2 Plaintiff is no longer free to amend his pleading.

3 Next, the Court construes all three of Plaintiff's filings as his notice that he intends to stand  
4 on his initial pleading. "When the plaintiff timely responds with a formal notice of his intent not to  
5 amend, the threatened dismissal merely ripens into a final, appealable judgment." *Id.* Although  
6 Plaintiff's response here was neither timely nor clear, the Court finds that he has adequately expressed  
7 his intent to stand on his initial pleading. Therefore, this matter is concluded and this Order shall  
8 serve as the final judgment in favor of Defendants. The Clerk shall close the file.

9 IT IS HEREBY ORDERED:

10  
11 DATED: November 13, 2009

12   
13 Honorable Janis L. Sammartino  
14 United States District Judge  
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# Notice of Appeal Notification Form

**To:** Clerk, U.S. Court of Appeals

**Date:** 12/15/2009

**From:** U.S. District Court, Southern District of California

**Subject:** New Appeals Case Information & Docket Fee Notification

## Case Information

Case Title: S BINYOMIN GINSBERG, Rabbi, as an individual consumer, and on behalf of all others similarly situated v. NORTHWEST, INC, a Minnesota corporation and a wholly-owned subsidiary of Delta Air Lines, Inc; DELTA AIR LINES, INC., a Delaware corporation

U.S.D.C. No.: 09-cv-00028-JLS-NLS

U.S.D.C. Judge: Janis L. Sammartino

Complaint/Indictment/Petition Filed: Complaint

Appealed Order Entered: 11/13/2009

Notice of Appeal Filed: 12/14/2009

Court Reporter: No court reporter

COA Status: ☐ Granted in full/part (appeal only)

☐ Denied (send clerk's file)

## Docket Fee Notification

Docket Fee: ☒ Paid

☐ Not Paid

☐ No Fee Required

USA/GOVT. APPEAL: ☐ Yes ☒ No

Date F/P granted (Show Date and Attach Copy of Order):

Was F/P Status Revoked? ☐ Yes

☐ No

Companion Case(s): (Please list consolidated cases, if applicable)

## Counsel Information

### Appellant Counsel:

### Appellee Counsel:

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**Appellee Counsel:** (continued)

Judith R. Nemsick  
Holland & Knight LLP  
195 Broadway  
New York, NY 10007  
(212) 513-3514

Counsel Status: ☒ Retained ☐ Appointed ☐ Pro Se

Appointed by: \_\_\_\_\_  
(Attach copy of order/minutes)

**SERVICE LIST**

**Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:**

x	Transmittal to U.S.C.A. (Appellant and Appellee)
x	Case Information/Docketing Fee Notification Form (Appellant and Appellee)
x	Notice of Appeal (Appellant, Appellee, U.S. District Judge)
	Docket Entries (Appellant and Appellee)
x	Transcript Designation and Ordering Form (Appellant Only, mailed separately)
	Magistrate Judge's Report and Recommendation
	COA Order
	F/P Order
	Minute Order
x	Other: ORDER Denying Defendants' Motion to Dismiss with Prejudice and Entering Final Judgment in Favor of Defendants, entered 11/13/2009

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

Angela Rowland

Deputy's Name

s/ Angela Rowland

Deputy's Signature

**UNITED STATES DISTRICT COURT**

Southern District Of California  
Office Of The Clerk  
880 Front Street, Room 4290  
San Diego, California 92101-8900  
Phone: (619) 557-5600  
Fax: (619) 702-9900

W. Samuel Hamrick, Jr.  
Clerk of Court

To: Clerk, U.S. Court of Appeals  
P.O. Box 193939  
San Francisco, CA 94119-3939  
(via electronic transmission)

Re: **USCA No:**  
**USDC No: 09-cv-00028-JLS-NLS**  
**Ginsberg v. Northwest, Inc et al**

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

x	Notice of Appeal				
x	Case Information/Docket Fee Payment Notification Form				
	Original Clerk's Record in		set(s) of		volume(s)
	Reporter's transcripts in		set(s) of		volume(s)
	Lodgments in		envelope(s)		box(es) folder(s)
	Judgment Order				
	Magistrate Judge's Report and Recommendation				
	F/P Order				
	COA Order				
x	ORDER Denying Defendants' Motion to Dismiss with Prejudice and Entering Final Judgment in Favor of Defendants, entered 11/13/2009				
x	Please acknowledge receipt				

Sincerely yours,

W. Samuel Hamrick, Jr.  
Clerk of Court

s/ A. Rowland

By: \_\_\_\_\_  
A. Rowland, **Deputy**

Date: 12/15/2009